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DOCUMENTS

IN EVIDENCE OF A CLAIM

SUBMITTED BY

CHARLES F. SIBBALD,

OF PHILADELPHIA,

TO THE HONORABLE

THE

SENATE AND HOUSE OF REPRESENTATIVES

OF THE

UNITED STATES OF AMERICA.

1837.

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TO THE HONORABLE THE
SENATE AND HOUSE OF REPRESENTATIVES
OF THE UNITED STATES.

The Memorial of Charles Fraser Sibbald, of the City of Philadelphia, respectfully sheweth—

That your petitioner, a native of this city, removed at an early age to the then province of East Florida, and resided therein under the government of Spain for a period of nearly fifteen years—that whilst he was there domiciled, to wit, in the year 1816, he obtained from that government a grant for 16,000 acres of land, on the express condition of improving said lands in the erection of Saw Mills, and having complied with the conditions required of him whilst that territory remained attached to the Crown of Spain, the lands thus granted, became the property of your Petitioner, and that he used and enjoyed them as such without hindrance or molestation, and that the Supreme Court of the United States has, at its present Session, confirmed his titles to the said lands—That your Petitioner being prevented from disposing of his lands, by the judicial scrutiny and investigation which was undergoing with respect to them by the government of the United States, in its different departments, was obliged to seek other sources of business and employment, and returned to this city, from whence he was influenced to continue to improve said lands, after the Cession of the Floridas to the Government of the United States—under the firm conviction, that whenever an adjudication of the Supreme Court should be obtained, it would result (as it has) in his favour. That in these improvements he has disbursed upwards of one hundred thousand dollars in the erection of Steam Mills on his said premises, (one of which Mills worked forty-eight saws) that he had made arrangements for a most extensive business there, and that his Mills were placed in complete and successful operation. That the Government of the United States, in 1828, sent an agent to Florida, who prevented your Petitioner from using his own timber to supply said Mills, (erected at such enormous expence) or for other purposes.—That his vessels were detained, his Mills had to be abandoned, his whole business prostrated—thus causing to your Petitioner indescribable difficulties and a most serious loss—That repeated remonstrances were made by your Petitioner to the Government and its agents against these illegal measures, based on the opinions of several of the most eminent professional gentlemen

of this Nation—That for several years past, these difficulties have continued to exist, and which your Petitioner has been compelled to submit to, until the decision which has just been made in the Supreme Court, conclusively proving that his rights have been thus infringed, all which facts he is prepared to substantiate by satisfactory evidence, and to furnish indisputable proof of the losses to which he has been subjected.

Wherefore, your Petitioner respectfully prays that your Hon. bodies will direct an investigation of his case to be made by the usual course of similar applications to the equity and justice of Congress, and to award him such compensation for the losses he has endured, as may indemnify him for such unauthorized aggressions upon his property and rights,—or allow him by a special act for that purpose, to present himself and his claim for judicial investigation before the United States tribunals held in Philadelphia, his present domicil—your Memorialist praying a reference to the annexed Documents, will as in duty, &c.

CHARLES F. SIBBALD.

Philadelphia, Feb. 24th, 1836.

Extract from the Minutes of the Supreme Court, published in the "Globe" and "National Intelligencer."

“SUPREME COURT OF THE UNITED STATES.

“ February, 6th, 1836.

“United States. } No. 60 and 103,
 “vs. } Cross appeals from the Superior Court
 “Charles F. Sibbald, } of Florida.

“Mr. Justice Baldwin delivered the opinion of this Court, confirming the title of the Petitioner to the whole 16,000 acres claimed by him.”

This case was founded on a grant for a prescribed quantity of land, made by the Government of Spain in East Florida. The grant was made by the Governor of Florida, Don Jose Coppinger, on the 2d of August, 1816, to the defendant, then a resident of that territory, and was surveyed according to the stipulations of the grant in three surveys, made by Don Jorge J. F. Clarke, the Spanish Surveyor General of the then Province.

It was proved in evidence, that the condition of the grant had been complied with whilst that country remained under the dominion of Spain—that the title of the defendant was unquestionable under that Government, and that he had, whilst Spain retained the sovereignty of that country, used and enjoyed his possessions without hindrance or molestation.

The following is intended to apply to the present case for indemnity presented to Congress, and not the one annexed, which has been recently decided in the Supreme Court of the United States.

The 2d art. of Florida Treaty

Provides that all private property shall be respected in the ceded territories; Spain ceded all "that is not private property."

The 8th art. Provides in relation to land grants made before the 24th of January, 1818, that they shall be respected to the same extent as they would have been, had the Government of Spain continued to exist in Florida. The words of the Treaty are, "the grants are and shall remain ratified and confirmed," "leaving the United States nothing to do but to distinguish between its own possessions and those of the inhabitants."

See opinion of Judge Smith, in the Superior Court of Florida, the U. States *vs.* arredondo, page 58.

By the original text of the Constitution of the Spanish Monarchy, 172 art. 10th chap. it is thus provided,—

"That the King cannot take the property of any individual, nor molest them in the possession, use and enjoyment of it."—See opinion of Wm. Sampson, Esq., in Hackly Case.

Again,—Title 1st, chap. i. art. 4—

"The nation is bound to maintain and protect by wise and equitable laws, the civil liberty, property, and rights of the individuals who compose it."—See opinion of M. M. Robinson, Esq., in Hackly Case.

"The title being good by virtue of the 2d article, needed no confirmation; had it been defective, it would have been perfected by the valid part of the 8th art." (*Flor. Treaty.*) —See opinion of the same.

This Agreement made and concluded this 12th day of October, A. D. 1827, between Samuel Grice and Charles F. Sibbald, both of the City of Philadelphia, and State of Pennsylvania, witnesseth,

That whereas the Spanish Government did in the year A. D. 1816, concede unto Charles F. Sibbald, a grant of Land in East Florida, now the Territory of Florida, containing four thousand acres, which is surveyed in what is known there as Turnbull's Swamp,—which said four thousand acres is said to be covered with live oak timber; and whereas the said Samuel

Grice now has a certain contract with the Government of the United States for a set of live oak frames; to wit, one for a seventy-four gun ship—one for a forty-four gun ship—and one for a twenty gun ship—making three entire frames of live oak, and in quantity about seventy thousand cubical feet; and said S. Grice being desirous to avail himself of said timber to execute said contract; now, it is this day agreed between the said parties, that the said Charles F. Sibbald doth sell and dispose of to the said Samuel Grice, so much of the live oak on three thousand acres of the above premises, (one thousand acres being already disposed of) as shall be necessary or required to complete the three entire frames of the ships above mentioned, at (16 cts.) say sixteen cents per cubical foot for mould timber; and the said Charles F. Sibbald further grants the privilege of cutting roads, building houses, and entering into the said premises in any manner that may be requisite for the fulfilment and execution of this agreement, and further *agrees to hold harmless the said Samuel Grice, from any difficulty that may arise from any conflicting claim* to the said Land; and the said Samuel Grice hereby agrees to cut, or cause to be cut, any live oak which can be used in the said three frames, and to pay for the same, at the price before mentioned, on the delivery of each cargo at its port of destination.

It is further understood, that Charles F. Sibbald shall have the benefit of all improvements made on the said premises, such as houses, stores, &c. there erected, and which shall become his property provided the cutting of the said timber shall occupy at least the ensuing season.

For the true performance of this agreement the parties do bind themselves, each in the penal sum of one thousand dollars. In Witness whereof, the parties have hereunto interchangeably set their hands and seals, the day and year first above written.

SAMUEL GRICE,

* SEAL *

CHARLES F. SIBBALD,

* SEAL *

Witness present—

JOHN GIBSON.
CORNELIUS TIERS. {

Whereas the undersigned, Charles F. Sibbald and Samuel Grice, did, on the 12th October, 1827, enter into an agreement, whereby the said Sibbald, for the consideration mentioned therein, did sell to said Grice the live oak on his land in Florida; and whereas it was found impracticable to obtain the said timber the past season, in consequence of difficulties not antici-

pated by either party, thus subjecting the said Grice to serious inconveniences and loss, and the said Sibbald to inconvenience in not receiving funds for the timber as anticipated by the contracts; and whereas the said Sibbald is desirous of raising funds on the timber as above mentioned, which the said Grice is willing to assist in, on terms of mutual reciprocity, Therefore this agreement witnesseth, that the said Grice agrees to advance his notes to the said Sibbald, to amount of dollars, to be renewed by him until Grice shall be in receipt of timber to amount thereof, in consideration of which, Sibbald agrees that in addition to the timber sold Grice, as per original contract, he is to be at liberty to take any additional timber he may want for mould timber, at the specified price of sixteen cents per cubic foot, and promiscuous timber at ten cents, and the smaller timber, less than that required for the Navy, at eight cents per cubic foot; the whole amount not to exceed one hundred thousand cubic feet.

SAMUEL GRICE,

* SEAL.*

CHARLES F. SIBBALD,

* SEAL.*

Philadelphia, April 3d, 1828.

Whereas, a certain agreement for the sale of live oak timber situated in Turnbull's Swamp, East Florida, was made and entered into on the 12th day of October, A. D. 1827, between Samuel Grice and Charles F. Sibbald, of Philadelphia, and whereas, the said agreement was extended on the 3rd day of April last, now it is further understood and agreed to between the said parties, that three years shall be the time limited to cut the live oak embraced in said agreement; that during the ensuing fall and winter, the greater part of the hands now contemplated to be sent out by the said Grice, shall be located to cut on said tract; and it is further understood and agreed by the parties to said agreement, that they bind themselves each to the other, their heirs, executors, administrators and assigns, for the true and faithful performance thereof, in the penal sum of three thousand dollars. Witness our hands and seals at Philadelphia, this thirteenth day of May, A. D. 1828.

SAMUEL GRICE,

* SEAL.*

CHARLES F. SIBBALD,

* SEAL.*

Witness present—

GEORGE BERIMAN, }
JOHN EVIL. }

L. B. A.—folio 351.

Charles F. Sibbald to Samuel Grice, Esq.

Philadelphia, October 22d, 1827.

DEAR SIR,—

Hereunto annexed you have a copy of the original plan of four thousand acres surveyed for me in Turnbull's Swamp, Mosquito. I have addressed Mr. Clarke, the former Surveyor General of East Florida, to send his brother (his former Deputy, by whom the survey was made) down to Mosquito, to point out my lines.

You will perceive the one thousand acres I have disposed of is marked off in the plan--your hands can cut any where else on the survey.

Yours very respectfully,

CHARLES F. SIBBALD.

Letter Book A, page 348.

Extract of a Letter from Charles F. Sibbald to George J. F. Clarke, Esq. (late) Spanish Surveyor General of East Florida, at St. Augustine, dated

Philadelphia, October 22d, 1827.

DEAR SIR,—

I had this pleasure by mail this day, which hope you will have received ere this reaches you—the present will be handed you by Mr. Grice, the brother of Mr. Samuel Grice of this city, to whom I have sold a quantity of live oak contained on my four thousand acre survey made by your brother for me, in Turnbull's back Swamp. In my letter by mail this day, I requested you would have the goodness to engage your brother to hold himself in readiness to proceed with Mr. Grice to Mosquito, to point out my lines, if not already engaged. You will please immediately, should he be absent from St. Augustine, to send an express for him, and by all means to engage him for me, that no disappointment shall occur.

Mr. Grice is now preparing a vessel to proceed direct to Mosquito, with men, provisions, and the necessary arrangements to commence cutting the live oak, and must beg that you will have the goodness to make such an arrangement with your brother that he will not be delayed in his operations. I send you a copy of my plot, although you have the original, as it may not be at hand.

STATE OF PENNSYLVANIA, }
City of Philadelphia. }

Personally appeared before me, Samuel Grice of the said city, who being duly affirmed according to Law, says, that some time in the summer or fall of the year eighteen hundred and twenty-seven, he entered into a contract with Charles F. Sibbald, of the said City of Philadelphia, for a large quantity of live oak timber, which he stated he had on a tract of land in Mosquito county, East Florida,—same fall he sent out his brother, Joseph Grice, with a gang of hands to commence cutting on said tract; but owing to the difficulty of finding the lines in time, and the lowness of the water in the Lagoon, no landing was effected, and he had to look elsewhere for timber, at an immense sacrifice of time and expence. The ensuing fall of the year 1828, he recorded at the Register's Office, at St. Augustine, his contract with said Charles F. Sibbald, and was about to cut on his tract, when he was forbid doing so by Mr. Aitkens the Government agent, who told him he would be compelled to seize the timber, and thus prevented, he (Joseph Grice) was compelled to look elsewhere for timber, as his letter of 29th November, 1828, will show; the letter hereunto attached being received from his brother at that time. And further states, that in consequence of the notice of said Aitkens, Mr. Charles F. Sibbald has been put to considerable loss and inconvenience, as this deponent believes, he the deponent having sustained a very considerable loss himself, in being thus prevented from cutting timber on the aforesaid tract of land.

SAMUEL GRICE.

Affirmed and subscribed, this ninth }
day of November, A. D. 1835, before }

PETER HAY, Alderman.

St. Augustine, November 29th, 1828.

DEAR BROTHER,—

I wrote you in haste on the 26th, since which I have had the contract with Sibbald recorded. Mr. Aitkens called on me yesterday, said he understood I was about to cut on Mr. Sibbald's grant at Mosquito, and forbid me cutting it—said that if I did so, he would be compelled to seize the timber, as the grant was rejected by the Land Commissioners—says it is what is called a *Mill Grant*, and that Mr. Sibbald has no right to it. I immediately called on Mr. Rodman (the collector) according to your instructions—he has advised me *not* to cut the timber;—says that if I do, I will subject the vessel and cargo to seizure, and myself to a prosecution. He thinks that Mr. Sibbald is entitled to the land on the St. Johns

where he *built* the mill,—but not to that on Mosquito. It appears by the report of the Receiver and Register, that the grant was given him merely for the *pine* timber on the land, such as he chose to saw up, but that he has no claim to the *soil*, or any other timber *except* the pine*—it is considered by the Commissioners here as belonging to the United States. I shall therefore not commence cutting there until I hear from you. Mr. Aitkin has stopped the cutting of live oak on *all* the *Mill Grants*, and has seized some timber. I shall have timber enough on Bulow's tracts to last us four or five months, or perhaps longer. I have this moment returned from the Land Office, and find that Bulow's property is acknowledged a good title, so that there will be no difficulty in that. I am in treaty with a Mr. Ormond for live oak;—his tract adjoins Bulow's, and the title is good. There has been a quantity of timber cut off his tract, but a good deal may be got there yet, and it is immediately adjoining our camps. I offered him 16 cents for the timber—which offer he did not accept; but I may perhaps get it from him on my return for 18 $\frac{1}{2}$ cents. I will however purchase it of him as soon as possible, as we will not have to move the camps to cut it, which will be a great advantage (and more particularly as we cannot cut on Sibbald's.) I expect Mr. Rodman will write Sibbald on the subject.

Hoping to hear from you soon, I remain

your affectionate brother,

JOSEPH GRICE.

NOTE.—The Land Commissioners had no authority to act on my grant, as it exceeded their limits, not being authorized to act on grants larger than 3500 acres. It was the Register and Receiver that made the report on Mill Grants which Mr. Grice alludes to in the preceding letter. Nevertheless they recommended mine for confirmation, they having no authority whatever to act on it themselves. There was, no doubt, a misconception by Mr. Grice, as relates to Mr. Rodman's opinion of my Mosquito survey; he has always expressed to me his conviction that it would be confirmed, which has proved correct.

STATE OF PENNSYLVANIA, }
City of Philadelphia. }

Personally appeared before me, Charles Snowden, of the City of Philadelphia, who being duly sworn according to the law, deposes and sayeth, that in the year of our Lord one thousand eight hundred and twenty-seven, he went to East Florida, accompanied by Charles F. Sibbald, (of the said City

* See Appendix.

of Philadelphia, Merchant,) a number of mechanics, workmen, and other persons, for the purpose of erecting Steam Saw Mills on the lands of the said Charles F. Sibbald, on the river St. Johns, at a place now called Panama; that subsequently he was agent for the said Charles F. Sibbald, who erected during his abode there, three Steam Mills, one of which worked forty-eight saws, and which by the books of the said Sibbald, cost between eighty and ninety thousand dollars; that after erecting these Mills, the agent of the Government of the United States would not permit the said Sibbald to cut or use his timber from off his own lands, to supply the said Mills to saw, threatening this deponent as agent, with arrest and imprisonment; that he put every possible obstacle in the way of the said Sibbald, to his manifest injury; that the said grievances and outrage were communicated to the said Sibbald by letters by this deponent; that the said Sibbald had a contract to supply Mr. Samuel Grice of the said City of Philadelphia, with a large quantity of timber, to be cut by the said Grice off of the lands of the said Sibbald, and that the agent of the Government of the United States prevented the said Grice from cutting and executing the said contract, thereby depriving the said Sibbald of a very large amount of funds; further this deponent sayeth not.

CHARLES SNOWDEN.

*Sworn to before me, }
this eighth of April, 1835. }*

PETER HAY, Alderman.

STATE OF PENNSYLVANIA, }
City of Philadelphia. }

Personally appeared before me, George Colt, who being duly sworn, deposes and says, that he is now of the age of twenty-eight years, that he was employed by Charles F. Sibbald as a book-keeper at Panama Steam Saw Mills, in East Florida, in the years 1828 and 1829, and part of the year 1830; that the said Mills were erected by the said Charles F. Sibbald, and by his books cost upwards of eighty thousand dollars at that time; that said Mills formed one of the largest concerns in this country for sawing lumber, one of them working eight gangs, containing forty-eight upright saws; that they were in successful and prosperous operation, that the agent of the Government of the United States, Mr. Aitken, after said Sibbald had erected said Mills at such enormous expense, on land granted to him by the Spanish Government, forbid him from cutting or using his own timber to saw and supply said Mills; that he otherwise interfered in preventing the execution of a contract, whereby Samuel Grice, of this city, was to cut a very large

amount of timber from the lands of the said Sibbald, thereby depriving said Sibbald of a very large amount of funds, and causing him manifest injury; that he has recently visited said Mills and found them desolate and in a state of decay; further this deponent sayeth not.

GEORGE COLT.

*Sworn and subscribed this 29th {
day of September, A. D. 1835, before {*

PETER HAY, Alderman.

Extract of a Letter from *William L. Haskins*, Esq. agent of Charles F. Sibbald, at Panama Steam Saw Mills, East Florida, June 11th, 1828.

In consequence of the arrival of a special messenger from Government, to prevent the cutting of timber on public lands, we are in sad trouble here. He has seized 8000 feet of live oak, (moulded,) cargoes on ship board, cut upon a tract of land confirmed by the Board of Land Commissioners. For this reason I am prevented from taking the balance of the timber from Black Creek. I am fearful that he will interfere with timber cut from Mill Grants.

Extract of a Letter from Charles F. Sibbald to Jos. M. White, Esq., Delegate from Florida, dated

Philadelphia, June 27th, 1828.

DEAR SIR,—I have a letter this morning from my agent in Florida, stating that *a special agent has arrived from Washington*, on the river St. Johns, where he is *seizing* vessels laying there loaded with *live oak timber*, or their cargoes, and says from the report of the Land Commissioners' Receiver and Register there, that timber cut on Mill Grants also is subject to seizure. Was there ever any thing so iniquitous,—to detain vessels and seize property before the right of the property is decided? The Government of Spain, actuated by liberal views in these respects, gave you leave to cut any quantity, and on any extent of land you pleased, without making the expenditures of thousands of dollars as I have invested on my property, and which have only now been informed that there was a question of my right to. I have now four vessels, either in the river St. Johns, or will shortly arrive there; two out of the four vessels now gone have cost nine thousand dollars; the measures pursuing there by the Government will prove perhaps

of serious consequences to me, these vessels are liable at this season of the year to be seriously injured by the worms, and their detention there would be ruinous; if the agent persists in seizing live oak timber, even if he does not directly interfere with me by seizing what I have bought from others and detaining my vessels, it will be tantamount. I must beg therefore that you will on the receipt of this have the goodness to inform me, whether as the representative of the people of Florida, you will write to the Secretary of the Treasury, or to whose office it may belong; and protest against such an unjust measure, which if you deem it of consequence to remove the erroneous impression made of Mill Grants, I will send a certified copy and translation of mine to the Secretary of the Treasury. I consider that my grants stand on such strong grounds, that they cannot deprive me of an acre in justice, to trace them from the beginning,—of the ultimate result, I do not feel apprehensive. I think you will have no difficulty whatever in establishing my title on the strong grounds which it is held. Please to let me hear from you as soon as convenient.

Copy of Remonstrance from the Honorable Joseph M. White,
Delegate from Florida, made at the request of Charles F.
Sibbald, dated

New York, June 30th, 1823.

To the Honorable Richard Rush, Secretary of the Treasury
of the United States.

SIR,—

I am informed that an agent has been sent to Florida to have all vessels arrested which may be laden with live oak. So far as the timber may be taken from the public lands, and particularly within the districts set apart by the President's proclamation under the law, it may be proper; but I apprehend that the Government never have and never can arrest any one or any vessel for the timber cut from lands covered by a Spanish grant. If an unfavourable report was ever made by a local Board not authorized by law to pronounce a final judgment, the United States must provide for the decision before they can seize upon or consider it public property. Such has been the practice of the Government, and a contrary rule would embarrass all the trade of the country and subject the Government to damages for every illegal seizure.

Extract of a Letter from C. Sully, Esq., agent pro. tem. Panama Steam Saw Mills, to Charles F. Sibbald.

July 16th, 1828.

The present measures of our Government, as respects live oak, will for the present prevent any shipment of that article.

The same to the same.

Panama Steam Saw Mills, Aug. 10th, 1828.

The United States agent is here giving much trouble, and will be the cause of much distress in this territory. I have purchased and paid for all the live oak timber I have—yet anticipate much inconvenience from his measures. *He now talks of stopping PINE TIMBER.* (Note—*He did so.*)

The same to the same.

Panama Steam Saw Mills, Dec. 18th, 1828.

Aitken (the Government agent) has stopped my timber on Black Creek, likewise some at Mosquito and in its vicinity.

Extract of a Letter from Charles F. Sibbald to John Rodman, Esq. Counsellor at Law, at St. Augustine.

Philadelphia, Dec. 5th, 1828.

I have sold Samuel Grice, Esq. of this city, some live oak on one of my surveys at Mosquito, obtained under my Mill Grant. He has recently sent out persons to cut it. I have desired his brother (who has gone out) in the event of any interference by the Government agent, to apply to you. In that case you will be pleased to have a suit instituted in my behalf, in the sum of \$40 or \$50,000 against the agent, as Mr. Grice's contract is at least \$80,000 with the Government, for which he is cutting timber. Mr. White at my request made a remonstrance to the Treasury Department, saying that their interference with any timber cut on lands covered by a Spanish grant would subject the Government to damages.

L. B.—folio 96.

Extract of a Letter from Charles F. Sibbald to Charles Downing, Esq. *Register of Public Lands, at St. Augustine.*

Philadelphia, December 5th, 1828.

You will oblige me by addressing the Treasury Department, lest some interference of the Agent of the Government on my surreys might prejudice my personal interest, and consequently thereby that of the Government of the United States.

L. B.—folio 100.

Extract of a Letter from the same to *Joseph M. White, Esq. Delegate from Florida, at Washington City.*

Philadelphia, December 15th, 1828.

I understand that the Government agent has again returned to Florida, and I have requested Mr. Downing (the Register at St. Augustine) to correct the impression given of Mill Grants, or at least to do me the justice to refer to the literal translation of mine on file in his office, and to do what my case merits; to save my interest being affected and consequently that of the Government of the United States, should the agent interfere with me. I have (now) expended upwards of \$40,000 in Florida, which I look to my grants for ultimate security. Until our title is confirmed, the *Treasury Department* ought to know that we consider the ground on which we stand in Florida as *ours*, and instruct the agent of the Government in conformity, as I believe all orders emanate from that Department. I mention this, as I have recently been informed that there was a disposition on the part of the Government agent to interfere.

L. B.—page 3.

Extract of a Letter from Charles F. Sibbald to Charles Snowden, Esq., his agent at Panama Steam Saw Mills, Florida.

Philadelphia, Dec. 29th, 1828.

I have heard from Mr. Rodman about Mr. Aitkin, the Government agent, stopping Mr. Grice (from cutting my timber,) same day wrote to Washington—shall make a stir, depend upon it—I will make them pay for it, or allow Mr. Grice to proceed at once.

Extract of a Letter from Charles F. Sibbald to John Rodman,
Esq., his Counsellor at Law, and Collector of the Customs
at St. Augustine, East Florida.

Philadelphia, January 5th, 1829.

I addressed you on the 5th ultimo, enclosing my Petition to the Court, respecting my Mill Grant, and was duly favoured with yours of the 11th ultimo, from Jacksonville, acquainting me of the infamous procedure on the part of the agents of the Government of the United States,—who in violation of the Treaty of Cession of Florida, have infringed on the rights of individuals which that treaty declared should be respected and observed to the same extent that they would have been, had the Government of Spain continued in that territory; but how different is the case! when that of Spain gave its subjects permission to cut timber, without limits, by asking for it; and the other shows a disposition to take from individuals that which they have fairly obtained and possessed for an elapse of so many years. On the receipt of your letter, I immediately addressed Mr. White (Delegate from Florida) respecting these iniquitous measures; and as he made a remonstrance at my instance to the Secretary of the Treasury in July last, against these proceedings, I was in hopes that he would be enabled to show the injustice of them to the Secretary, and have instructions in conformity sent to the agent (of the Government.)—In this I have been disappointed, and Mr. White writes me although it is contrary to his opinion, yet he apprehends they will leave it to the Courts. Immediately on the receipt of Mr. White's letter, I addressed Mr. Berrien. I did this to endeavor to be so represented at Washington as to get the order to the Government agent countermanded, so as to allow Mr. Grice to proceed in his contract, as *the consequences to both of us will otherwise be serious.* I requested you to proceed against the Government if he interfered with Mr. Grice, by instituting a suit in my behalf for damages, provided you approve of such a measure. No doubt the Report of the Receiver and Register has influenced this opinion of the District Attorney, on which the Government agent is acting; but perhaps your personal representations of my case might cause him to revoke his opinion as respects my claim, so as to permit Mr. Grice to proceed—otherwise *it is very evident we shall have to seek remuneration if they persist in stopping Mr. Grice.*

From same to same—page 6. 136.

Philadelphia, January 24th, 1829.

I feel assured that the proceedings of the Government agent are illegal, and that an untried Spanish grant cannot be construed to be the property of the Government of the U. States, therefore think I shall appoint an agent in my name to cut my timber, and if the agent has the power, he shall imprison him, and I will pay the penalty of the law. The U. States having made a solemn contract to do justice, and respect the property of individuals to that extent that the Government of Spain would have done; it is very evident that a most liberal course ought to be pursued.

NOTE.—See *Mr. Rodman's Reply*, that as Collector of the Port of St. Augustine, he is positively *ordered to seize all timber cut from these grants, &c. his orders being from the Treasury Department.*

L. B.—folio 144, 155, 157, 165.

March 28th, 31st, April 6th.

Letters urging my agent to have logs cut to supply the Mills.

See his answers, that the Government agent had prevented his doing so—would not permit him to cut a log.

L. B.—folio 173.

Extract of a Letter to C. Snowden, Esq., agent at Panama Steam Mills.

Philadelphia, May 12th, 1829.

Respecting the Government agent, you will of course apply to Mr. Rodman, (my attorney at St. Augustine) whom I shall address, and Mr. Berrien, and *if possible have that gentleman arrested.*

From same to the same—L. B.—folio 185.

Philadelphia, June 8th, 1829.

I shall write to Washington, meantime (as regards cutting logs) you will be advised by Mr. Rodman *until the difficulty is removed—I must submit.*

L. B.—folio 187.

Extract of a Letter from the same to the Honorable John Macpherson Berrien, Esq. then at Washington.

Philadelphia, June 13th, 1829.

My agent in Florida writes me by last mail, that the agent of the Government of the United States is placing every possible obstacle in my way—that he has forbid his cutting pine timber (to supply my Saw Mills) on my survey held for thirteen years—he has threatened him with imprisonment, and to bring a detachment of United States troops from St. Augustine to take possession of my property; after permitting persons to cut large quantities of timber on other grants for me, when on the point of removing it, he has prevented them; thus after expending upwards of forty thousand dollars, I find an obstacle placed in my way, which, if not removed very speedily, is calculated to injure me in the most serious manner. That the Government of the United States will sanction such a violation of our rights, I cannot believe, as the treaty declares that private property shall be respected in the ceded territory.

Will you be pleased to advise me how to proceed, or to represent the matter at Washington, that the agent may be instructed to desist. I assure you I have by these means since October last, been deprived of seven or eight thousand dollars which I should have received from my live oak contract with Mr. Grice, and could now establish heavy damages against the agents (and Government.)

NOTE.—See opinion of the Honorable John M. Berrien. In consequence of this opinion, Charles Snowden, Esq., my agent at the Panama Steam Saw Mills, refused to submit to the Government agent, until he "*threatened to bring the United States troops to compel him,*" and "*to take possession of my premises,*" and *the United States District Attorney published an order forbidding all persons from cutting pine timber on grants which were not decided or confirmed.*

L. B.—folio 189.

From the same to Charles Snowden, Esq., his agent at the Panama Steam Saw Mills.

Philadelphia, June 15th, 1829.

I have now before me your esteemed of the 27th ult.; contents noted. I have written to Washington respecting the unwarrantable and iniquitous proceedings of the Government

agent, and think the difficulties occasioned by him will be removed. I thought it best first to apply at the fountain head for redress; if I do not get it, and an assurance that he will desist, at all hazards, as I can now prove damages, I will have him arrested.

Extracts of Letters from Charles Snowden, Esq., agent of Charles F. Sibbald in Florida, dated,

Panama Steam Saw Mills, Dec. 4th, 1828.

“Mr. Aitken, the Government agent, has gone to Mosquito “for the purpose of stopping persons from cutting (timber) off “of the Government lands, among the rest, Mr. Grice; you “will therefore act accordingly.”

Again,—

December 18th, 1828.

“I saw Mr. Aitken yesterday; he told me he had stopped “Mr. Grice, and that Mr. Grice is going to return home again; “he also told Mr. Rodman, who told me he would write to you “about it.”

Again,—

April 23rd, 1829.

“The Government agent has been *here* and forbid me cut-“ting (pine timber for Mill logs) on your tract, and says he “will lay an injunction on me.”

Again,—

May 7th, 1829.

“The Government agent has been here, and forbid me cut-“ting Mill logs, and said he would get an order from the Judge “to put me in the Fort.”

Again,—

May 28th, 1829.

“The Government agent has and is giving all the trouble he “can to this concern as I before wrote you, and has stopped a “quantity of fine logs—he let them cut until they got a lot, “and then forbid them to take them away. I wrote Mr. Rod-“man, (your Counsel at St. Augustine;) he says Aitken called “on him, and seems determined to stop me, and says, if I cut “any, he will procure a corps of infantry from the garrison, “&c.—Mr. Rodman will of course write to you.”

From the same to the same.

Panama, May 1829.

“I am sorry to inform you that the agent (of Government) has put every obstacle in the way. Mr. Sully had near one thousand logs cut; Mr. Turner and Emley had a quantity cut,

ready to deliver, but every one has been stopped by the agent; he also came to the Mill again and forbid me cutting. *The (U. States District) Attorney, Mr. Douglass, at St. Augustine, has put a piece in the paper, forbidding any person cutting pine timber until claims are decided.*"

NOTE.—The foregoing letters of the 4th and 18th December, 1828, speaking of the Government agent stopping Mr. Grice, alludes to the brother of Samuel Grice, Esq., of this city, who, after proceeding to Florida as agent for his brother, with fifty or sixty ship carpenters, &c. to cut the timber under his contract with me, was prevented so doing for two seasons, when on legal opinions obtained by me, Samuel Grice, Esq., himself went out with his carpenters, and wrote from Mosquito as follows:

New Smyrna, January 1830.

"I wrote Captain Snowden on the 14th of last month, requesting him (as we had agreed) to come to this place to present himself as your agent, and defend me against any conflicting claim, so that I may obtain the live oak if practicable, *for again I have been told by the U. S. authorities at St. Augustine, that any attempt to cut the timber will be resisted and arrested.*" It is necessary to put me in peaceable possession as early as practicable—you will see the necessity of decision in this case. If you think that Captain Snowden will not attend to any communication from me, please to write him without delay."

Again,—

New Smyrna, E. F. Feb. 20th, 1830.

"Yours of the 4th was received last week, since which, Mr. Mills (acting for Captain Snowden) has been here, and yesterday we went out together to the tract you claim in Turnbull's Swamp; nearly all my men are now there at work. It is much to be regretted that you neglected to give instructions to Captain Snowden as per our understanding. When I left Philadelphia, I wrote to request his attendance in December, as I heard from good authority that we should be forbidden to cut on the tracts. A letter received from Captain Snowden fifteen days ago, informed me he would be here in a few days, calculating on which I sent off men last week to commence cutting, concluding he would arrive in time to put me in quiet possession, and defend us therein if required. To be prevented from cutting and taking away the timber *after we have erected our houses on the premises,—have our men, teams, &c. in active employment, would be an enormous sacrifice, independent of its disabling me from performing my contract with the Government, and for which I am under heavy bonds.* I trust, however, Captain Snowden,

"after seeing Mr. Mills, may be aware of the importance of this subject, and give it immediate attention. The land on the tract is excellent, and well adapted to sugar culture. You would lose a handsome property if you should eventually fail in establishing your title. I hope it may be valid. The live oak on it looks well so far. We fell yesterday about fifty trees, generally sound. I hope sincerely, Sir, that you may be enabled to establish your claim, as this property is certainly valuable."

Copy of a Letter from John Rodman, Esq. Counsellor at Law, and Collector of the Customs, St. Augustine, East Florida, dated at Jacksonville, 11th December, 1828, to Charles F. Sibbald of Philadelphia.

DEAR SIR,—

I am here attending Court, and have seen your agent, Mr. Snowden, who requested me to write to you on the subject of your contract with Mr. Grice for the cutting of live oak timber on a part of your grant for a Mill Seat. This gentleman called on me a few days before I left St. Augustine, and showed me his contract with you, and mentioned that *Mr. Aitken, agent for the Navy Department of the U. States, now here, had forbidden him from cutting any timber on the lands held under your grant.* I had previously seen Mr. Aitken on the subject, and though I am of opinion that your grant will be ultimately confirmed, he acts under the opinion of the District Attorney of the U. States in St. Augustine, which is repugnant to mine.

The District Attorney has given to Mr. Aitken his written opinion, that all the grants for Mill Seats, until confirmed by the Government, or decided by the Judiciary as valid, are to be considered as public property of the United States. Under this opinion, Mr. Aitken has already seized some timber cut upon a grant of this nature, and would undoubtedly seize any that Mr. Grice might cut on any part of your grant—that is, live oak or red cedar timber—and Mr. Grice would also be exposed to a prosecution under an Act of Congress, imposing a penalty of 500 dollars and six months imprisonment, on any person cutting timber on the public lands. Under these circumstances, I believe that Mr. Grice will not proceed under his contract with you.

I am extremely sorry for these untoward circumstances, but I know of no other remedy than to proceed with all possible despatch to have your grant confirmed.

Very respectfully, your obedient servant,
JOHN RODMAN.

L. B.—folio 195.

Extract of Letter from Charles F. Sibbald to Charles Snowden, Esq., his Agent at Panama Steam Saw Mills.

Philadelphia, June 30th, 1829.

My counsel says, "Let the parties proceed (in cutting timber) and let the Government agents resort to legal process.—Territorial Judges cannot refuse to respect your possession until it is legally divested." I think any counsel in St. Augustine, not linked with the Government, would confirm what I say. I am glad you have acted as you have done. I would use this advice so as not to make enemies of the Government parties;—were it not for this, I would have Mr. Aitken (the Government agent) arrested at once.

L. B.—folio 317.

Extract of a Letter from the same to John Rodman, Esq.
Counsellor at Law, St. Augustine.

Philadelphia, February 1st, 1830.

A few days ago I had a letter from Samuel Grice, Esq., at Mosquito, desiring I would send my agent to put him in peaceable possession of my tract there (again) that he might proceed to execute his contract entered into with me for live oak. He says the Government authorities at St. Augustine still threaten him. I should like some immediate step taken against the person who shall attempt thus to infringe on my rights.—My contract with Mr. Grice is a considerable one, and you will please to take any measures necessary, if he is interfered with, by holding the parties to bail, if practicable, in the sum of dollars, as I can establish damages. If there is any delicacy in your acting in this case against the agents of the Government, you will be pleased to depute some one to act for me.

L. B.—page 317.

Extract of a Letter from the same to Samuel Grice, Esq. of Philadelphia, then at Mosquito, East Florida.

Philadelphia, February 1st, 1830.

I addressed you on the 4th ult. and a few days since received yours from New Smyrna, (without date,) respecting our

live oak contract. I wrote Captain Snowden to meet you at Tomoka, and trust he has done so. I know of no obstacle beyond what has been communicated by you to prevent our contract from being fulfilled. As respects the threats of the Government officers, I beg leave to call your attention to what was communicated by Mr. Berrien before he entered into the duties of the office of Attorney General—I believe I showed it to you. I have desired that the parties infringing on my rights shall be held to bail. I hope you will forthwith commence your operations on my place, as your brother must know the lines, and a copy of the survey can be had from Mr. Clarke, (the former Surveyor General.)

Extract of a Letter from John Rodman, Esq. Collector of the Customs at St. Augustine, and Counsellor at Law.

St. Augustine, February 24th, 1830.

DEAR SIR,—I have received your letter of the 1st instant by the last mail.

With respect to a suit against the agent of the United States or any other officer, for interrupting Mr. Grice or any other person authorized by you to cut timber on the tract of land claimed by you at Mosquito, I am sorry that my official situation with the Government, in relation to these land claims, prevents me from taking any part against the United States for alleged trespasses committed by their officers, as *I am expressly directed by the Secretary of the Treasury to seize on all timber cut upon these lands. The Government consider all lands in Florida, the claims for which have not been confirmed, as public lands.*

Before you direct any suit against the officers of the United States, for preventing you from cutting timber on this land, I advise you to reflect upon the risk you run, and to consult some intelligent lawyer at Philadelphia on the subject. Under these circumstances, I conceive it to be extremely hazardous for you, and also for Mr. Grice, to proceed in the cutting of timber on this land. If, however, you should decide upon any legal proceedings against the United States officers, I recommend you to employ Mr. , an attorney and counsellor of this place, in the business.

NOTE.—Mr. Rodman being Collector of the Customs of St. Augustine, as well as my attorney at law there, felt a delicacy in acting against the authorities of the Government of the United States. See opinion of George M. Dallas, Esq. obtained at that time.

L. B.—page 336.

Extract of a Letter from Charles F. Sibbald to John Rodman, Esq., Counsellor at Law, St. Augustine, Florida.

Philadelphia, March 16th, 1830.

By the last mail I was favoured with yours of the 24th ult. and in conformity with your advice, am getting the opinion of one of our most eminent lawyers in relation to my live oak contract with Mr. Grice; any interference at this time with Mr. Grice *would be ruinous*, and the Government, I flatter myself, is too magnanimous to let me suffer for a few acres of land—and where my exertions and so much money has been used in good faith.

Any interference at this time with Mr. Grice would be *a most serious business both to him and me*, as he is under heavy bonds to execute his contract with the Government, and *I am under a penalty to sell him my timber. I trust the agent of the Government will consider the consequences, and not act in a matter so important precipitately. I must seek redress if he does.*

L. B.—page 343.

Extract of a Letter from the same to Samuel Grice, Esq., at Mosquito, East Florida.

Philadelphia, March 23rd, 1830.

I last week received your esteemed favour of the 20th ult., and am much pleased to hear so favorable an account of my timber and land. I would have written you by last mail, but wished to give you the opinion of Mr. Dallas, &c. I have written Captain Snowden,—he will be instructed how to act by the next mail, respecting the Government agent. I have requested Mr. Rodman to suspend any proceedings against him until he shall hear from me.

L. B.—folio 349.

March 30th, 1830.

Letters to Charles Snowden, Esq., that I had applications far and near to sell lands in Florida,—(could not do so on account of the existing difficulties with the Government.)

L. B.—folio 346.

Copy of a Letter to the Honorable S. D. Ingham, Secretary of the Treasury of the United States, dated

Philadelphia, March 25th, 1830.

SIR,—Having contracted with Mr. Grice of this city, for the sale of a quantity of live oak from my lands in Florida, for the use of the United States, and for the object of complying with his obligation to the Government, he has been interrupted in entting the timber by the officer of the United States, under the idea that the land granted to me in 1816, by the Spanish authority, could be affected by the acts of the 3rd May, 1807, and of the 1st May, 1817, as the preventing Mr. Grice from complying with his contract with the United States, after his encountering great expenses in sending a large number of workmen, and in preparation for cutting and shipping the live oak, must at the same time involve me in enormous and irremediable loss,—I hastened to lay my papers before Mr. G. M. Dallas and Mr. S. Chew, for their professional advice, and beg leave to enclose their opinions for your notice, and as fully explaining the views on which my rights depend.

If as I presume you find those views conclusive, I pray you to send to me the necessary instructions to be transmitted to the United States officer in E. Florida, early enough to prevent the infinite injury, loss, and injustice that must ensue to Mr. Grice and myself from stopping the progress of the cutting the wood.

I am, Sir, very respectfully,

Your obedient servant,

CHARLES F. SIBBALD.

L. B.—folio 350.

From the same to the same, dated

Philadelphia, April 3rd, 1830.

SIR,—I had the honor under date of the 26th ult., of addressing you on a subject of deep interest to me, and in reference to which I enclosed the professional opinions of Mr. G. M. Dallas and Mr. Chew of this city; not having been favored with a reply to my communication, the object of the present is to beg that you will have the goodness to give it your attention as early as you conveniently can, in order that *I may* communicate with and *instruct my agent* in Florida, at the earliest possible period accordingly.

To Hon. S. D. INGHAM,

Secretary of the Treasury, Washington.

Treasury Department, 6th April, 1830.

SIR,—In answer to your letter of the 3rd instant, I have to inform you that your communication of the 26th ult., was referred to the Navy Department, which is charged with the care and preservation of live oak and red cedar timber in Florida.

I am respectfully,
Your obedient servant,

S. D. INGHAM,
Secretary of the Treasury.

CHARLES F. SIBBALD, Esq., Philada.

L. B.—folio 356.

Copy of a Letter to the Secretary of the Navy from
Charles F. Sibbald, dated

Philadelphia, April 13th, 1830.

SIR,—I had the honor of addressing the Treasury Department of the United States on the 26th ult., enclosing the professional opinions of two of our gentlemen of the bar in relation to a subject of deep interest to me, and am informed by that Department, that the subject of my communication was referred to you as having charge of the preservation of live oak and cedar timber in Florida. I have to request that you will be pleased to inform me whether the agents of the Government have been instructed to desist from their proceedings against my property in Florida, or otherwise. Hoping that you may be impressed how important the subject of my communication is to me as an individual, and of *the consequences that may result* to the parties acting by my authority,

I am, Sir, very respectfully,
Your obedient servant,

CHARLES F. SIBBALD.

NOTE.—No answer was received to this letter.

OPINION OF THE HON. J. M. WHITE.

Copy of a Letter from the Hon. Joseph M. White, Delegate from Florida, to Charles F. Sibbald.

Washington, Dec. 30th, 1828.

DEAR SIR,—

I have received your letter of the 26th instant, and concur fully in opinion with you. I do not think a claimant to land under the treaty, can be holden responsible for cutting timber on the land until it is decided to be public property by the Supreme Court. I have so written to the Treasury, but they will leave it to the Court I apprehend.

I am your most obedient,

JOSEPH M. WHITE.

OPINION OF THE HON. J. M. BERRIEN.

Copy of a Letter from the Hon. J. Macpherson Berrien to Charles F. Sibbald.

Washington, 5th January, 1829.

DEAR SIR,—

I have received your letter, and recognize in the writer the son of one of the intimate acquaintances of my earlier life.

On reference to Mr. ——, I find that he has communicated to you a proposition on the subject mentioned in your letter, whieh, as it received my assent, dispenses with the necessity of my adding more on this matter.

I agree with Mr. White in relation to the inquiry contained in the postscript of your letter. I would direct the parties to proeceed, and let the agent of the United States resort to legal process. Territorial Judges cannot refuse to respect your posession until it is legally divested. I shall be glad to see you if you come here, and we will converse further on this subjeet.

I write in great haste, and therefore only add that I am,

Respectfully yours,

J. MACPHERSON BERRIEN.

To CHARLES F. SIBBALD, Esq.

OPINION OF GEORGE M. DALLAS, ESQ.

Original sent to the Treasury Department of the U. States prior to the Confirmation of my Grant by the Supreme Court of the U. States.

Philadelphia, March 25th, 1830.

SIR,—I have examined your papers, and while I regret the necessity of hastening an opinion on their contents, feel much confidence in the impressions communicated.

The United States, agreeably to the 8th article of the Florida Treaty, are bound to ratify and confirm any grant of land made before the 24th January, 1818, by the King of Spain, or any lawful authority from him in that Territory, to the person in possession of the land.

Have you such a grant, and are you in possession of the land?

Your grant is dated according to the translated copy exhibited to me, on the 2d of August, 1816, and it is made by "Coppinger," the Governor of East Florida. Three surveys have been made by your directions and for your use, under this grant, embracing in all sixteen thousand acres; you have in addition fulfilled the object and complied with the terms of the grant, by erecting Saw Mills, and carrying them into active operation.

Your possession under the grant has never been discontinued nor interrupted by any adversary claim or pretention.

There does not then appear any reasons why your grants should not be "ratified and confirmed by the United States, if Governor Coppinger possessed lawful authority" from the King of Spain to make it. I should exceedingly doubt the necessity of your producing any evidence of this authority other than what is contained in the grant itself as a genuine official document. To call for such evidence is in effect to call for Coppinger's commission or instructions from his Sovereign, a call that can never be answered.

It is possible, however, by recurring to the laws and legal forms respecting the creation and transferring of land titles in East Florida, while under the Spanish dominion, to show the general extent of a Governor's power therein. And I think sufficient is discernible in the collection made by Joseph M. White, Esq., printed by order of the House of Representatives in 1829, to show that such grants of land as yours for the purpose to which yours was designed, were within the lawful authority conferred by the Spanish monarch upon the Governor of East Florida.

2d. Supposing, however, you have a title which must ultimately be "ratified and confirmed" by the United States, what are you to do in the meantime? Are you to be deemed and to act in reference to the lands as a mere stranger or intruder? The inquiry arises from the fact that they are regarded as public lands, and that you are prohibited treating them as your property. After obtaining the cession of the Floridas, the United States adopted measures to separate the private from the public property: to know with certainty what lands belonged to the nation, and what upon the condition of the purchase, still belonged to individuals. They did not abruptly and violently assume the whole, and exact from every claimant proof that he was entitled to a part before they would give it back to him; on the contrary, actuated by a wise attention to the political interest of peace and population, they disturbed nobody in his possession, and those claims only became subjects of difficulty which embraced a larger quantity of land than was covered by a single grant which wanted the support of actual occupancy, or which were presumed to have originated subsequent to and in fraud of the treaty. The ratifications of the treaty were exchanged in February, 1821, and in May, 1822, Congress passed the act for ascertaining claims and titles to land in the territory of Florida, constituting for that purpose a Board of three Commissioners; several other acts were subsequently devised and carried into operation. All claimants by patent grants, concession, or order of survey, dated previous to the 24th of January, 1818, were required to file their respective claims before these Commissioners, who, however, were prohibited from confirming any claim in favour of any actual settler at the time of the cession of the territory to the United States, if the quantity claimed exceeded 3500 acres. By these proceedings the United States justly legislate in such a manner as to continue, if not to guarantee, in every settler and claimant the full enjoyment of the position he actually held at the ratification of the treaty, until his possession should be divested by due course of law.

I understand you to have conformed to the requisitions of the acts of Congress as far as they were applicable to your claim,—to have filed it with the Commissioners,—to have exhibited the evidence upon which it is founded, and not to have obtained their confirmation of it only because the quantity claimed exceeded the limits of their jurisdiction. Their opinions, as far as expressed, were in favour of its allowance. It was not till the spring of 1828, that Congress legislated with a view to carry to final adjustment those claims which exceeded in their extent 3500 acres. They then referred them to "be

received and adjudged" by the Superior Court of the District, upon petition filed by the claimants; you have conformed to the directions of that statute, and your claim is now regularly waiting judicial scrutiny and determination. While such is the state of things it is impossible to imagine without assailing the justice and faith of the Government, that your rights will be affected by any act or order to which your assent is not given. Until the Court to which the United States have themselves turned you, shall condemn your title, they will respect your possession and leave you to its entire enjoyment. It is said, however, that the officers of Government apply to your case the provisions of the act of Congress of 3d of March, 1807, entitled an act to prevent settlement being made on lands ceded to the United States, until authorized by law; and those of the act of the 1st of March, 1817, entitled "An act making reservation of certain public lands to supply timber for Naval purposes." By the first section of the first act they deem themselves authorized to regard (the four thousand acres) as public lands, and by the second and third section of the second act they propose to institute a criminal prosecution against those who cut the timber, and to enforce the forfeiture therein mentioned.

This pretension is in my opinion equally unfounded and unjust. The acts of Congress of 1807 and 1817, apply only to lands which had theretofore been ceded to the United States, their titles are decidedly of that import, and at any rate, their provisions cannot be perverted to nullify possessions and settlement, which took effect before the act could have operation whatever over the ceded territory. This indeed is the principle contained in the proviso to the first section of the first act, harmonizing with the views I have already taken on this head. It is thus provided that nothing herein contained shall be construed to affect the right, title, or claim of any person to lands in the territories of Orleans or Louisiana, before the Board of Commissioners established by the act, &c. shall have made their report, and the decision of Congress been had thereon. Such a proviso is implied in the course Congress has taken on the adjustment of land titles in Florida; bare palpable justice will imply it without a word to promise it; and until the Court designated in the act of 1828 shall have decided against you, your rights ought not to be impeded in their exercise, under colour of any law whatever, much less a law which had no efficacy in Florida (if it ever had any,) until after your rights became fixed and vested. To consider the lands as public lands, under the act of 1807 and 1817, is to prejudge the very question to determine which the act of 1828 referred you to a judicial tribunal.

Entertaining these impressions, I am of opinion that your best course in the present emergency is as follows:

1st. Apply to the proper Executive Officer at Washington, to obtain instructions to the Register and Receiver in East Florida not to interfere with your enjoyment of the lands, cutting timber, &c. until the Court shall have finally decided against your claim.

2nd. If such instructions cannot be obtained, and the Register and Receiver shall threaten any interference with yourself or your authorized agent in the enjoyment of these lands, cutting the timber, I recommend, &c.

Very respectfully, your obedient servant,
GEORGE M. DALLAS.

CHARLES F. SIBBALD, Esq.

NOTE.—The original of this opinion was transmitted to the Treasury Department, is probably on file in that office, and the copy of the concluding paragraph has by some means got displaced.

On the 6th of February, 1836, the Supreme Court of the U. States, confirmed the title to the whole of the lands, 16,000 acres, claimed in conformity to the views expressed in this opinion.

L. B. B.—folio 460.

Extract of a Letter from Charles F. Sibbald to John Rodman, Esq., his Attorney at St. Augustine, and Collector of the Customs of that Port, dated

Philadelphia, Nov. 4th, 1835.

I have it in contemplation to take a contract from the Government for some live oak frames. Please to inform me whether there would be any probability of the Government agent attempting to stop my cutting my own timber at Mosquito before a final decision against me, or would there be any difficulty in getting a clearance from the custom house.

Extract of a Letter from John Rodman, Esq., Collector of the
Customs at St. Augustine, and Counsellor at Law, dated

St. Augustine, 20th Nov. 1835.

With regard to your inquiry respecting the cutting of live oak timber, you cannot cut a stick of it on any of the land which you claim, until the grant be finally confirmed in Court. My orders on that subject from the Treasury Department, are express to stop and seize all timber cut, and attempted to be transported from public land, or any, the grant for which has not yet been confirmed by the United States.

NOTE.—The contention, as respects the titles to my land, being determined in my favor by the recent decision of the Supreme Court, it is unnecessary to say any thing further on this subject; nevertheless, to show the opinion entertained of my rights whilst Spain continued to possess the sovereignty of the Floridas, I will mention the following, as being perhaps somewhat important in their application on the present case, and which may be found in the compilation of Land Laws made by Joseph M. White, Esq., and published by order of Congress in 1828,—page 257.

Don Nicolas Garrido, the agent of the Duke of Alagon, to whom the King of Spain had made a grant for a very considerable part of East Florida, and who was sent there to receive formal possession of his lands, finding that large grants had been made by the Governors for “factories and mechanical works,” (such as my own) and that no time was specified for the fulfilment of the conditions required in those grants, made a formal demand of Governor Copperger, that such grants as had not had their conditions complied with should revert to the crown as public lands, in order that they might be embraced in the grant to the Duke of Alagon. Governor Copperger referred the communications of Don Nicolas to the Auditor of War, (as the Government Counsellor,) who maintains the rights of individuals holding those grants, and the Governors to make them, in the following words, which are “approved” by Governor Copperger.

“With respect to the concessions of lands for the establishment of mechanical works, it is very obvious that it being “the will of His Majesty to improve the province, which he “has taken so much interest in dispensing for the purpose co-“pious favors, the Governors had the privilege of granting “lands for the establishment of said works, with the same in-“duement of title of proprietorship to all those who contribu-“ted by their exertions to works of so much utility to the

“improvement of industry—since by their industry and expenditures, they have made themselves entitled to every protection to animate their perseverance.”

The preceding opinion of the Auditor of War shows conclusively that where a land grant was made by a Governor, that the power of the King even could not be brought to impair it, where his beneficence had been extended to one of the favorites of the nobility.

The following extract of a communication from the Governor of East Florida to the Marquis of Sumeruelos, the Captain General of the Island of Cuba, dated at St. Augustine, June 19, 1811, (taken from a compilation of J. M. White, Esq. p. 236) shows that the Spanish government gave permission to the inhabitants to *cut timber of any description on the public lands* to any extent, without limit, without price, without a grant,—which timber was disposed of as their own individual property, as is adverted to in my letters, pages 12 and 16. The Governor says in his letter,—

“The greater part of the commerce of this Province at the present, is carried on in British vessels, coming to the port of Fernandina, Amelia Island, for the purpose of taking timber and carrying it to England,—paying the slight duty of 7½ per cent., levied upon a moderate valuation. *This timber is felled by the inhabitants wherever they please without restriction.*”

The following extracts have too important an application on the present case to be here omitted. See vol. 9, Pet. Repts. p. 711, the U. States *vs.* Mitchell and others (on a Florida Grant.)

Another objection is of a more general nature—that the grantees did not acquire a *legal* title to the lands in question. But it must be remembered, that the acts of Congress submit these claims to our adjudication as a court of equity; and, as often and uniformly construed in its repeated decisions, confer the same jurisdiction over imperfect inchoate and inceptive titles as legal and perfect ones, and require us to decide by the same rules on all claims submitted to us, whether legal or equitable.

Whether, therefore, the title in the present case partakes of the one character or the other, it remains only for us to inquire whether that of the petitioner is such in our opinion that

he has, either by the law of nations, the stipulations of any treaty, the laws, usages, and customs of Spain, or the province in which the land is situated, the acts of Congress or proceedings under them, or a treaty, acquired a right which would have been valid if the territory had remained under the dominion and in possession of Spain.

In doing so, we shall not take a detailed review of the leading cases on Spanish grants already decided by this Court, in relation to those lands which formed a part of the Royal domain, in contradistinction to those which may be considered as Indian lands claimed by Indians, by their title, whatever it may be. Those comprehended within the claim of the petitioners being of the latter description, as they contend, and thereupon rest their title, it will suffice to state some general results of former adjudications which are applicable to this case, are definitively settled, so far as the power of this court can do it, and must be taken to be the rules of its judgment. They are these—

That by the law of nations, the inhabitants, citizens, or subjects of a conquered or ceded country, territory, or province, retain all the rights of property which have not been taken from them by the orders of the conqueror, or the laws of the sovereign who acquires it by cession, and remain under their former laws until they shall be changed.

That a treaty of cession was a deed or grant by one sovereign to another, which *transferred nothing to which he had no right of property*, and only such right as he owned and could convey to the grantee. That by the treaty with Spain the *United States acquired no lands in Florida to which any person had lawfully obtained such a right by a perfect or inchoate title*, that this court could consider it as *property* under the second article, or which had, according to the stipulations of the 8th, been granted by the lawful authorities of the King; which words *grants or concessions* were to be construed in their broadest sense, so as to comprehend all lawful acts which operated to transfer a right of property, perfect or imperfect. 6 Pet. p. 710. 7 Pet. 86-8. 8 Pet. 445-49-50. 486.

That the effect of the clauses of confirmation of grants made was that they confirm them presently on the ratification of the treaty, to those in *possession* of the lands, which was declared to be; that legal *seisin* and *possession* which follows a title is co-extensive with the right, and continues till it is ousted by an actual adverse possession as contradistinguished from residence and occupation. 6 Pet. 743. 8 Cr. 229-30. 4 Wh. 213-33. 4 Pet. 480. 504-6. 5 Pet. 354-5.

That the United States, by accepting the cession under the terms of the 8th article, and the ratification by the King, with

an exception of the three annulled grants to Allegon, Punon Rostro, and Bargus, can make no other exceptions of grants made by the lawful authorities of the King. 8 Pet. 463-4.

That the meaning of the words lawful authorities in the 8th article, or competent authorities in the ratification, must be taken to be "those persons who exercised the granting power by the authority of the Crown." That the 8th article expressly recognises the existence of these lawful authorities in the ceded territories, designating the Governor or Intendant, as the case might be, as invested with such authority, which is to be deemed competent till the contrary is made to appear. 8 Pet. 449 to 453.

That "by the laws of Spain" is to be understood the will of the King expressed in his orders, or by his authority, evidenced by the acts themselves, or by such usage and customs in the province as may be presumed to have emanated from the King, or to have been sanctioned by him, as existing authorized local laws. 6 Pet. 714 to 716.

In addition to the established principles heretofore laid down by this court as the legal effect of an usage or custom, there is one which is peculiarly appropriate to this case. The act of Congress giving jurisdiction to this court to adjudicate on these causes, contains this clause in reference to grants, &c., "which was protected and secured by the treaty, and which might have been perfected into a complete title, under and in conformity to the laws, usages and customs of the government under which the same originated." 6 Pet. 708-9. 3 Story Laws, 1959-1960.

This is an express recognition of any known and established usage or custom in the Spanish provinces, in relation to the grants of land and the title thereto, which brings them within a well established rule of law. That a custom or usage saved and preserved by a statute has the force of an express statute, and shall control all affirmative statutes in opposition, though it must yield to the authority of negative ones, which forbid an act authorized by a custom or usage thus saved and protected, (4 Co. Inst. 86. 298,) and this is the rule by which we must test its efficacy according to the act of Congress, which we must consider as of binding authority.

In taking possession of Florida pursuant to the treaty, and in establishing a government in and over it, Congress have acted on the same principles as those which were adopted by this court in the former cases. In the act of 1821, for carrying the treaty into execution, Congress authorizes the vesting the whole power of government in such person as the President may direct for the *maintaining the inhabitants in the free enjoyment of their property.* Pamphlet Laws, 47.

The Governor thus appointed, by his proclamation in the same year announces to the inhabitants that he has been invested with all the powers, and charged with all the duties heretofore held and exercised by the Captain General and of the Intendant of the Island of Cuba over the Floridas; and the Governor thereof recites the foregoing act of Congress, declares that they shall be maintained and protected in the free enjoyment of their property, &c., and that all laws and municipal regulations which were in existence at the cessation of the late government remain in full force. Pamphlet of 1822, p. 113.

The 10th section of the act of 1822 contains the same pledge for the protection of property, and the 13th continued in force the existing laws, till altered by the local legislature then organized. Pamphlet, 15.

The formal act of the surrender of the Floridas by Spain to the United States was made by the commandants of both of the provinces, by the authority of the Captain General of Cuba under a royal order. Pamphlet, 110.

These are most solemn acts of both governments, which, as the proceedings under the treaty of cession, are made a rule for our guide in deciding on the validity of the title to lands in the provinces; they have all been ratified and approved by the King and Congress, affording the highest possible evidence of the true meaning of both the high contracting parties to the treaty. They point directly to the kind of government which existed before the cession as being vested in the Captain General and Intendant of Cuba, and the Governors of the provinces, as the supreme legislative, executive, and judicial power, subordinate to the King only. And as it became afterwards in the hands of the Governor alone by act of Congress subordinate only thereto, while under both, the government was administered in conformity to the local laws and municipal regulations. It cannot therefore be doubted that among the other powers of the former government, that of granting lands was invested in some of its officers, nor that such officers were the Governor, the Intendant, or Captain General, as the case might be; thus exhibiting an union of opinion between the King of Spain as well as the legislative and judicial departments of this government, as to the meaning of the treaty, which cannot be without its influence on its true construction and bearing on the rights of parties now before this court: sitting in an appellate court of equity, directed to decide "in conformity to the principles of justice" and the laws and ordinances of the government under which *the claim of the petitioner originated*, they must be our guide.

NOTE IN CONCLUSION.

These are indeed "most solemn acts of both governments." Here is a treaty, for the execution and observance of which, the faith of two nations is sacredly pledged,—here is a land grant to the undersigned, by a Spanish governor, that in that treaty is declared to be "*private property*," that is decided to have been such by the Supreme Court of the United States; but the stipulations of this treaty, and the rights of individuals, are in the preceding quotations by the Supreme Court, so completely defined and so easily understood, that not one word is necessary to add on that subject. The undersigned cannot but regret the necessity which has compelled him to publish documents, obviously never intended for the public eye; some of these too written in a language only to be understood by those who will place themselves in a situation so very peculiar, with a confidence of their rights, and with a determination to maintain and defend them until overpowered; but in undertakings of the extent of those of the undersigned, the difficulties produced corresponding therewith, it is impossible almost for others to conceive the effects and the operations of such measures as have been pursued towards him; let it however be contemplated, that the Government of Spain, in the year 1816, made a land grant of 16,000 acres to the undersigned in Florida; that the grant was divided into three several surveys by the Spanish Surveyor General; that having complied with the requisitions of the grant whilst that country remained attached to the Crown of Spain, that it became the absolute property of the undersigned; that he used and enjoyed it as such without hindrance or molestation; that Florida was ceded to the Government of the United States in the year 1820, that Spain provided in the treaty of cession that the rights of her then subjects should be respected and protected as they would have been had the country remained under that Government; that the United States undertook to investigate the title of the undersigned to the said land, and that fifteen years have passed in this judicial scrutiny and investigation; that the Government of the United States has in this time treated it as "*public property*," and the undersigned as a mere intruder; that the undersigned, confident of his rights, *so sacredly guaranteed under the treaty*, as well by his own researches of every land law that he could obtain, as by the opinions of some of the most eminent professional gentlemen of this nation, resisted these encroachments until circumstances compelled him to submit; that remonstrance against these illegal measures followed remonstrance to the different departments of this Government, and that to the very last moment these cruel, unjust measures still existed and were persisted in against him. That this contention with the Government

prevented him from selling his lands; that when he undertook to improve them he was hindered and resisted; that he sold sixteen thousand dollars worth of timber to be cut from them without any expense whatever to himself to a person having a contract with the Navy Department for about one hundred thousand dollars, (looking to this timber to execute the same) and he is prevented by the Government agent from cutting the timber; that he undertook extensively to improve his said lands by erecting Steam Mills on them, induced by having an abundance of pine timber of his own to supply them, and after erecting three Saw Mills, one of the largest concerns in this country, on which he expended upwards of one hundred thousand dollars, requiring when in operation from one to two hundred logs per day; that he is prevented from cutting his own lumber to supply said Mills to saw; that the *Treasury Department ordered the Collector of St. Augustine to seize the timber attempted to be cut from his property; that the U. States District Attorney* gave public notice, forbidding the timber being cut from it; that in consequence of these measures his Mills, after being placed in the most successful operation, had to be abandoned, and laying so long desolate, that they have gone to ruin. That from the recent decisions of the Supreme Court of the United States, supposing that a different course would in consequence be pursued by the agents of the Government, the undersigned is induced to make a contract with the Navy Commissioners for the delivery of between two and three hundred thousand dollars worth of timber, influenced to do so from having the timber on his own land; and he was again notified that he cannot cut his own timber, whilst on his part he has these extensive engagements to comply with, and is under heavy bonds for their execution. Thus for several years past has every attempt to use his property been rendered abortive; but the *Supreme Court of the U. States has now confirmed his title to this property*—and this confirmation develops a violation of individual rights unparalleled on record, in circumstances or in amount; contrary to the laws of nations, contrary to the laws of Spain from which power his grant emanated; and contrary to the laws of this nation, as by reference to the documents herewith presented will most clearly appear. The undersigned is prepared to prove his losses; he has devoted almost exclusively twenty years of his life to this property. He asks nothing but justice. He feels assured that the constituted authorities of his country will promptly award to him a fair and equitable indemnity for all that he has suffered and lost, and that no one will oppose him in obtaining it.

CHARLES F. SIBBALD.

Philadelphia, February 24th, 1836.

APPENDIX.

The following copy of a Letter from Charles F. Sibbald to Charles Downing, Esq. Register of the Public Lands, St. Augustine, East Florida, is published in consequence of reference being made to the Report of the Register and Receiver at St. Augustine, in the letter attached to the affidavit of Mr. Grice, page 9.

Letter Book B.—page 96.

Philadelphia, Dec. 5th, 1828.

SIR,—I have recently been handed the report of the Register and Receiver of St. Augustine to the Treasury Department of the United States, wherein I find my Mill Grant reported by them for *confirmation in equity*—for this I am much obliged; but as the general impression given in the report in relation to those grants is such as to prejudice the parties interested, I hope you will pardon the liberty I now take in begging your reference to the certified copy of mine, and the literal translation of the same on file in your office. In the year 1816 the constituted and lawful authorities of the King of Spain, it will be found, in order to “encourage industry,” increase the resources of the revenue of the country, grant me in absolute property (on the compliance of a stipulated condition, to wit, the erection of a Saw Mill) five miles square of land, without discriminating either its quality or its “timber.” The soil (“tierra”) contained in that extent of boundary, in one or more surveys, is granted, which in conformity was allotted me by the Surveyor General of that then province, George J. F. Clarke, Esq.

That *my title is legal* cannot be questioned according to the laws, usages, established customs and policy of the Spanish nation, which liberality in Land Grants still exists throughout their colonies and dominions. I cannot call in question the rights of others. It was on the faith of this grant, looking to it as a security for my “funds and labours,” that I have been influenced to expend upwards of \$40,000 in erecting three Steam and Water Mills on my survey in that territory, and also have devoted so many years of my life to these objects. I know of no instance of any grant made by the Governors of Florida be-

ing revoked by the superior authority. Mill Grants were made as far back as the year 1801. During my residence in Florida, about fifteen years, I feel persuaded no instance occurred in which the limits of the power of the Governors in granting lands were called in question. It is an incontrovertible fact, that the privilege of cutting "*pine trees*" was given by asking for it without limit, neither was the bounty of the Government confined to any particular growth in species of timber.* In my grant the soil ("*tierra*") is evidently given, and in other similar grants, permit me to say, that the soil could not be given for the foundation to erect a Mill on without giving an unlimited right to the soil within the whole boundary of the grant. It is expressed "in order that the grantee may avail himself of its timber," without specifying any particular species or growth, which, as the timber never ceases to grow, makes it a grant in perpetuity. These latter remarks will apply pretty generally to those grants. May I beg the favor of you to refer to my grant and to correct the impressions given, and which you may see it merits under every consideration; as each case will now soon be brought before the Supreme Court. You will oblige me by so doing, *also by addressing the Treasury Department, lest some interference of the agent of the Government on my surveys might prejudice my personal interest, and consequently thereby that of the Government of the United States, as I am deeply interest in this matter.*

Your early attention will oblige,

Yours, very respectfully,

CHARLES F. SIBBALD.

CHARLES DOWNING, ESQ.,
Register of Public Lands, St. Augustine.

* See Letter of Governor of Florida, folio 33, in confirmation of this fact.

The following *affidavit* of Mr. Charles J. Norbury, of Philadelphia, was not previously offered in evidence, in consequence of his absence from this city.

STATE OF PENNSYLVANIA, {
City of Philadelphia, {

Personally appeared before me, Charles J. Norbury, of said city, who being duly sworn, deposes and says:—That he was employed by Charles F. Sibbald, Esq. as a clerk in his counting house in the said city of Philadelphia, from the year 1827 to the year 1830,—that during this period, he became perfectly familiar with the business transactions of the said Sibbald,—he attended to his bank business, as well as his books,—he also copied his letters and other documents as became necessary.—That during this period Mr. Sibbald's exclusive business was between this and Florida; where Mr. Sibbald had erected and put into operation two Steam Saw Mills, known as the “Panama Saw Mills;” and that one of these Mills worked upwards of forty saws,—that he, the said Sibbald, was erecting a third Steam Saw Mill, for which the engine and machinery had been made in this city, during the said period of his employment. That these Mills cost, as appears by the books of said Sibbald up to that period, between eighty and ninety thousand dollars.

This deponent further says, that he knows that these Mills were placed in the most successful operation,—that Mr. Sibbald had a number of vessels of his own, besides chartered vessels, engaged in the business of these Mills. That in entering into these extensive engagements to improve his property in Florida, Mr. Sibbald had at that time made corresponding arrangements to realize a large amount from his property there. That Mr. Sibbald was in the habit of making contracts for the delivery of timber of various descriptions besides that cut by his Mills, and among other contracts, he had one with Samuel Grice, Esq. of this city; who was to cut from the lands of said Sibbald, without expense to him, about sixteen thousand dollars worth of live oak timber.

That he knows from Mr. Sibbald's letters and documents, which he copied at that time, *that an agent was sent to Florida by the government of the United States, (a Mr. Aikens) who entirely stopped Mr. Sibbald from cutting his timber* to saw in the Mills that he had erected, at such expense; and that he also stopped Mr. Grice cutting and executing the contract he had made, after Mr. Grice had sent a large number of ship carpenters and other persons to Florida to cut the same: thereby effectually stopping Mr. Sibbald's resources. That on the subject of these encroachments on his property and rights, he obtained several legal opinions, which this deponent also copied at the time, declaring these acts of the government and agents to be contrary to law, and that the government would be liable for the consequences. That Mr. Sibbald in vain applied to the Register of the Land Office at St. Augustine; and also to the Treasury and Navy Department of the United States, and notified them of the consequences that would result to both the government and himself. This deponent further says, that these illegal acts of the government and its agents, in taking Mr. Sibbald's property out of his control, preventing him from using his timber to saw, or for any other purpose, detaining his resources it was that entirely destroyed Mr. Sibbald's business in Florida, and obliged him to abandon his Mills; and the amount disbursed on them to be lost, as they have gone to ruin, besides the loss of the profit of his Mills, his contracts, and other business which he was advantageously pursuing.

Signed C. J. NORBURY.

*Sworn and subscribed before me }
this 25th day of April, 1836. }*

ANDREW GEYER, Alderman.

STATE OF PENNSYLVANIA, }
City of Philadelphia. }

On the sixth of December, 1836, before me, Edward Hurst, Notary Public, of said city, personally appeared John Gibson, also of said city, Merchant, who being duly sworn, deposes and says, that he is now of the age of forty-three years, that in the year A. D. 1827, he kept the books of Mr. Charles F. Sibbald, of this city, which he continued to do until the year 1829, and that in the year 1830 he went to the Panama Steam Saw Mills, situated in East Florida, there to act as agent for Mr. Sibbald; that he is perfectly familiar with Mr. Sibbald's business transactions within the period of time above mentioned.

That during this period, to wit, in the year 1827, Mr. Sibbald erected a Steam Saw Mill on his lands at Panama aforesaid; that in the year 1828, the said Mill was destroyed by fire; that in the year 1829 Mr. Sibbald erected another Steam Saw Mill, and another in the year 1830; that these Mills cost Mr. Sibbald, as appears by his books, to that time, upwards of eighty thousand dollars.

That this deponent went to Panama aforesaid, accompanied by Mr. Peter R. Walker and Mr. George M. Snyder, two highly respectable mechanics, well known in this community, the one a mill-wright and steam engineer, the other a steam engineer; that on the arrival of this deponent at Panama aforesaid, he found these Steam Mills most eligibly situated on lands of the said Charles F. Sibbald, quite near the sea, surrounded by the best yellow pine timber; the one mill which had eight gangs of saws attached to it, was overhauled and put in complete operation; that the other mill, for which the engine and machinery were made in Philadelphia aforesaid, would also have been in operation in the course of about two months time, as the necessary workmen had been sent out several months previous to complete it; but at that period Mr. Sibbald's business, after being in successful and complete operation, was entirely prostrated by the course adopted by the different Depart-

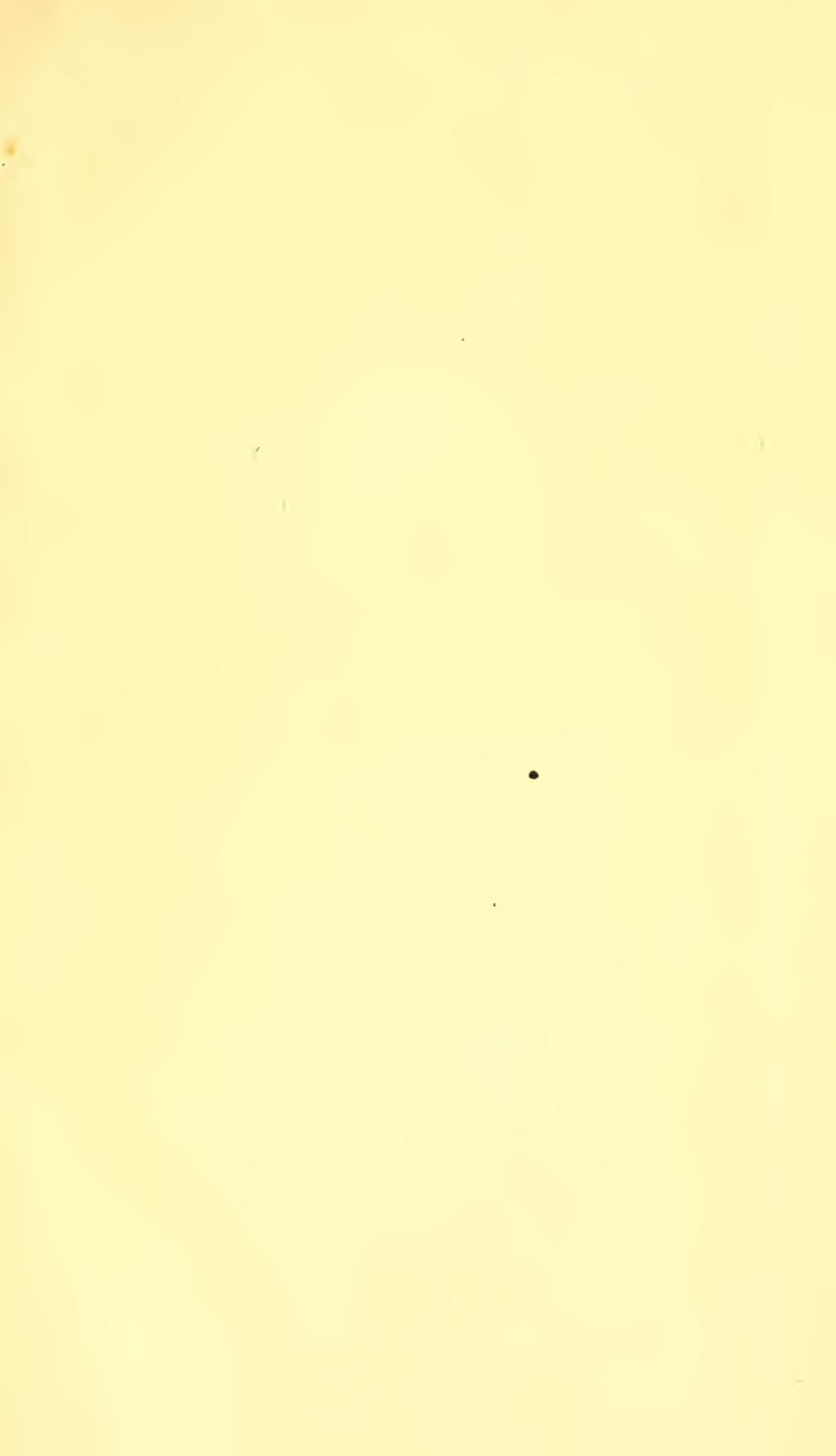
ments of this Government, by preventing him from cutting the timber off his own lands, and depriving him of the use of his property, and a large amount of money arising from a contract sale of live oak timber.

This deponent further says, that he remained in Florida aforesaid, until May, 1833, transacting business for his own account, at which period the mills at Panama were laying desolate, as they now are, and had at that time been greatly injured, if not totally ruined.

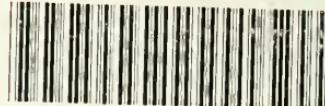
JOHN GIBSON.

*Sworn and subscribed before me }
the day and year aforesaid. }*

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